

Application No. 10/052,770
Amendment dated August 7, 2003
Reply to Office Action of May 7, 2003

REMARKS

Claims 5, 8 and 11 have been amended for clarification purposes and claims 12-33 have been canceled. New claims 34-47 have been added. These amendments are not intended to narrow the scope of these claims. The claims have been rewritten to place them in better form for examination and to further obviate the 35 U.S.C. §112 rejections set forth in the Office Action dated May 7, 2003. It is believed that none of these amendments constitute new matter. Withdrawal of these rejections is requested.

Claims 1-33 are rejected under 35 U.S.C. §112, second paragraph as being indefinite. Specifically claims 1, 17 and 19 are indefinite in the recitation of "KW7648". Upon allowance of the claims Applicant will make a seed deposit with ATCC and amend the specification and claims to include the Accession Number.

Claim 5 is rejected in the recitation of "wherein said plant is male sterile". Applicant has amended claim 5.

Claim 8 is indefinite because "the . . . or protoplasts" lacks antecedent basis. Also "the cells or protoplasts of the tissue culture being" is unclear. Applicant has amended claim 8 as suggested by the Examiner.

Claims 19-25 as indefinite because the metes and bounds of what is retained in "KW7648-derived". Applicant has canceled claims 19-25.

Claims 20, 23, 25 and 29 are indefinite in the recitation of several relative terms lacking comparative basis. Applicant has canceled claims 20, 23, 25 and 29. Claim 30 is rejected as indefinite for lacking defined method steps. Applicant has canceled claim 30.

Claim 31 is rejected as indefinite for lacking antecedent basis. Applicant has canceled claim 31. Withdrawal of these rejections is respectfully requested. Withdrawal of these rejections is respectfully requested.

Claims 1-33 were rejected under 35 U.S.C 112 first paragraph as containing subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or which is the most nearly connected to make and or use the invention. Applicant acknowledges the requirement for a deposit of biological material.

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Upon allowance of the related claims in this application, the deposit will be made with American Type Culture Collection. As stated in the specification on page 32, the seed deposit is being maintained by AgReliant Genetics LLC at their Ivesdale, Illinois facility. The deposit will be available to the Commissioner during the pendency of this application and upon allowance of any claims, deposit of the corn seed will be made with the American Type Culture Collection.

The undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit; and
- e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

Accordingly, withdrawal of this rejection is requested.

Claim 33 is rejected under 35 U.S.C. §112, first paragraph for enablement. Claim 33 has been rejected. Withdrawal of this rejection is respectfully requested.

Claims 12-33 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has canceled claims 12-33. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 1-33 are rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Foley (U. S. Patent 5,973,239). Applicant has canceled claims 12-33. Applicant submits there are numerous differences

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between the '239 patent and the present invention. Some of the differences include the plant height and ear height. The plant height for the '239 patent is 232.0 cm as compared to 203.2 cm for the present invention. The ear height for the '239 patent is 111.9 cm versus 83.8 for the present invention. Applicant respectfully requests withdrawal of this rejection.

In view of the above amendments and remarks, it is submitted that the claim satisfies the provisions of 35 U.S.C. §§102, 103 and 112 and is not obvious over the prior art. Reconsideration of this application and early notice of allowance is requested.

RESPECTFULLY SUBMITTED,					
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